

February 5, 2008



**TRANSCRIPT
February 5, 2008**

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President
Councilmember Roger Berliner
Councilmember Valerie Ervin
Councilmember George Leventhal

Councilmember Phil Andrews, Vice President
Councilmember Marc Elrich
Councilmember Nancy Floreen
Councilmember Duchy Trachtenberg

1
This transcript has been prepared from television closed captioning and is not certified for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 President Knapp,
2 [Inaudible] in chamber right now because we have to be, because the business of the
3 county goes on. Nevertheless, none of us want to be here, really. Many of us have just
4 come from the funeral for Planning Board Member and former County CAO Gene
5 Lynch. And many of our staff are at the funeral home for our friend and colleague
6 Marilyn Praisner, who passed away last Friday. Just last Tuesday, she was here with us
7 and sent us messages until the time nearly she went into surgery. We all have many
8 memories of her life and service to our County, and we want to share them. In
9 recognition of the fact that many people aren't with us now, the Council as a body, both
10 past and present members, will set next Tuesday at 11:00 a.m. aside for a tribute to
11 Marilyn Praisner and her legacy. We will now have a moment of silence in honor of
12 Gene Lynch, and for us, as Councilmembers, to commemorate and pay silent tribute to
13 our friend and colleague. If you would all please rise and please join us. Thank you very
14 much. We have no announcements or petitions this week. Madam Clerk, are there
15 minutes to approve?

16
17 Council Clerk,
18 You have the minutes of January 17th and 22nd for approval.

19
20 Councilmember Leventhal,
21 Move approval.

22
23 President Knapp,
24 Moved by Councilmember Leventhal.

25
26 Councilmember Floreen,
27 Second.

28
29 President Knapp,
30 Seconded by Councilmember Floreen. All in favor of the minutes, please raise your
31 hand. That is unanimous. Now before us the consent calendar. Is there a motion?

32
33 Councilmember Berliner,
34 Move.

35
36 President Knapp,
37 Moved by Councilmember Berliner; seconded by Councilmember Floreen. Any
38 comments on the calendar? Mrs. Floreen.

39
40 Councilmember Floreen,
41 I just note, with respect to Item A, which is the Office of Legislative Oversight report with
42 respect to county road projects and scheduled estimates, they will be scheduled for full
43 Council briefing next week as background to our work on the CIP.



February 5, 2008

1 President Knapp,
2 Thank you. And I just wanted to note on the consent calendar we have a number of
3 committees and commissions to which appointments have been made, and I just want
4 to thank all of those who have willingly chosen to serve, for their service and for their
5 commitment to our county. Any other comments? If there are no comments, all in favor
6 of the consent calendar, please raise your hand. That is unanimous. We now have
7 before us -- just one second. We've got one thing before we get to -- we have the
8 confirmation of the County Executive's appointee as Director of the Bethesda Chevy
9 Chase Regional Services Center, Ken Hartman.

10
11 Councilmember Berliner,
12 So moved.

13
14 Councilmember Floreen,
15 Second.

16
17 President Knapp,
18 Moved by Councilmember Berliner, seconded by Councilmember Floreen. I just want to
19 thank Mr. Hartman for his willingness to serve. This is the first position we've had that is
20 a non-merit position. And it is significant in that respect, Mr. Hartman served
21 Councilmember Denis for many years, and is very aware of the district in which he is
22 now serving in this capacity. And we are very pleased for his willingness to serve on
23 behalf of the County. Mr. Leventhal.

24
25 Councilmember Leventhal,
26 Yeah, I also just wanted to say it was terrific working with Ken Hartman who he was
27 here as Chief of Staff to Councilmember Denis. And I don't think the County Executive
28 could have made a better appointment to this important position.

29
30 President Knapp,
31 Thank you very much. All in favor of the confirmation of the County Executive's
32 appointee please raise your hand? It is unanimous among those present. We now turn
33 to District Council Session. We have first before us action on Zoning Text Amendment
34 07-15, Signs and Permit Fees. The PHED Committee recommends approval. Mr.
35 Zyontz, any background for it?

36
37 Jeff Zyontz,
38 Yes. Basically, the intent of this ZTA is to make it -- to eliminate the fees for
39 homeowners associations on the Planning Board's list of such associations. There was
40 an issue that came up after the committee raised by DPS as to whether the intent of the
41 committee was to eliminate fees as opposed to waive or reduce fees. So in deference to
42 the ambiguity found by DPS, I polled the committee, and they said their intent was to
43 waive those fees. So, therefore, there are drafted amendments on page 5 of the memo
44 that says, effectively, that the fees would -- may be waived. It's still permissive. You



February 5, 2008

1 could make it mandatory and say must be waived. But I believe the intent of the
2 committee is to make those amendments to the ZTA as introduced.

3
4 President Knapp,
5 Councilmember Floreen?

6
7 Councilmember Floreen,
8 Thank you. Well, this was my initiative that Ms. Praisner and Ms. Ervin were cosponsors
9 on to actually eliminate the fee for nonprofit organizations. I thought that's how we
10 started up. So, Jeff, can you go back to the language?

11
12 Jeff Zyontz,
13 The language before in the section said may waive or reduced fees for tax-exempt
14 organizations. So that's what we got away from. What was put into the ZTA as
15 introduced said that waived or reduced fees may also apply to the Planning Board's list
16 of civic and homeowners association. So that upper language of waived or reduced still
17 remained. Upon, you know, your reflection and Mr. Elrich's reflection, you thought your
18 intent was to completely waive the fees?

19
20 Councilmember Floreen,
21 That's my recollection.

22
23 Councilmember Ervin,
24 That's my recollection.

25
26 Jeff Zyontz,
27 The question, then, would be whether you want to say must rather than may in the
28 amended language wage on page 5. So it would be any organization that satisfies
29 subsection 1A.

30
31 Councilmember Floreen,
32 Well, the point of this was simply to encourage and support community associations
33 who wanted to put up a sign saying, welcome to Woodside Estates, or Clarksburg or
34 community association or wherever, because sometimes that's onerous. So we have
35 not had a lot of time to focus on our legislative work in the past couple of days, but I do
36 think -- Ms. Ervin, if you agree with me as to your intention there; Mr. Elrich isn't here.

37
38 Jeff Zyontz,
39 So you would change the word in the first one on page 5 that is the direct or must waive
40 -- .

41
42 Councilmember Floreen,
43 Yeah.

44

4 This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 Jeff Zyontz,
2 Fees off required for any organization that satisfies, and may waive and reduce fees for
3 other organizations that are tax-exempt? Is that how it would read?

4
5 Councilmember Floreen,
6 That's correct.

7
8 President Knapp,
9 Is that an amendment by the sponsors?

10
11 Councilmember Floreen,
12 I do regret doing this right this moment, but our attention hadn't been drawn to that.

13
14 President Knapp,
15 I'm happy to postpone this and bring this back next Tuesday to make sure we've got this
16 all done appropriately. Let's do that. We'll pull this until next Tuesday.

17
18 Councilmember Floreen,
19 Why don't we do that. This is not the time to think a lot.

20
21 President Knapp,
22 Okay, thank you. We now turn to Action and Development Plan Amendment DPA 07-2.
23 Ms. Carrier.

24
25 Francoise Carrier,
26 This is an amendment to an existing development plan for a very large subdivision. This
27 particular amendment would intensify the use of an existing commercial center in the
28 Flower Hills Subdivision. It comes to you with recommendations of approval from
29 myself, the Planning Board and its staff. There is one typographical error in the
30 resolution that needs to be rectified. It states -- it refers to changes to the binding
31 elements that were handwritten at the hearing, and it states, the hearing date is
32 December 17, 2008, which has not happened yet, so it would actually be December of
33 2007.

34
35 President Knapp,
36 Okay.

37
38 Francoise Carrier,
39 And I thank Mr. Zyontz for catching that.

40
41 President Knapp,
42 Are there any comments or questions on the application? I see none. Do we need a
43 motion for actual approval? Is there a motion for approval for application number DPA
44 07-2?



February 5, 2008

1
2 Councilmember Leventhal,
3 Mr. President, I'll move that we concur with the Hearing Examiner -- the resolution as
4 drafted by the Hearing Examiner.
5
6 President Knapp,
7 Moved by Councilmember Leventhal. Is there a second?
8
9 Councilmember Ervin,
10 Second.
11
12 President Knapp,
13 Second by Councilmember Ervin. All in favor of the Hearing Examiner's opinion.
14
15 Council Clerk,
16 You need a roll call.
17
18 President Knapp,
19 Sorry. Clerk, please call the roll?
20
21 Council Clerk,
22 Mr. Elrich.
23
24 Councilmember Elrich,
25 Yeah.
26
27 Council Clerk,
28 Ms. Ervin.
29
30 Councilmember Ervin,
31 Yeah.
32
33 Council Clerk,
34 Ms. Floreen?
35
36 Councilmember Floreen,
37 Yes.
38
39 Council Clerk,
40 Mr. Leventhal?
41
42 Councilmember Leventhal,
43 Yes.
44



February 5, 2008

1 Council Clerk,
2 Mr. Berliner?

3
4 Councilmember Berliner,
5 Yes.

6
7 Council Clerk,
8 Mr. Andrews?

9
10 Vice President Andrews,
11 Yes.

12
13 Council Clerk,
14 Mr. Knapp?

15
16 President Knapp,
17 Yes. Motion carries. It's been approved unanimously. Thank you very much. We now
18 turn to action on the Spending Affordability Guidelines for the FY09 Capital Budget and
19 other general CIP Assumptions. Dr. Orlin.

20
21 Glenn Orlin,
22 Thank you. The MFP Committee meeting -- the MFP Committee met last week and
23 made the recommendations that are in this packet. I'll just go through them very quickly.
24 First of all, on the Spending Affordability Guidelines for General Obligation Bonds, they
25 recommend retaining the \$300 million guidelines that targets that Council adopted back
26 at the beginning of last October. It represents a 9.1% increase over the guidelines used
27 last year. The law says that you can raise the guidelines if there is a significant change
28 in economic conditions. The Executive's feeling and staff's and MFP Committee's as
29 well agreed that if there have been any significant changes in conditions; they've been
30 negative, not positive. So there really isn't the predicate for raising the guidelines. In
31 addition, by the way, if you should know if you do raise the guidelines, you also need to
32 raise the PAYGO amount in each of those years to maintain the 10% policy that we've
33 been following the last couple of years. Do you want to go through these individually or
34 should I go through the whole list?

35
36 President Knapp,
37 Let me see if any Councilmembers have questions. I had just two that I identified in
38 going through last night in the review. Any Councilmembers? Okay.

39
40 Glenn Orlin,
41 Okay.

42
43 President Knapp,



February 5, 2008

1 The only question I had was the assumption of the implementation rate where it's 64%
2 right now going up to 87 to 90%. As the justification, do we think we can actually get
3 close to that, or are we just hoping that we see an upwards spike again?

4
5 Glenn Orlin,
6 I think the executive staff wants to talk to that.

7
8 Jacqueline Carter,
9 We actually use an average rate for implementation rate. We take the 5-year average.
10 The current implementation rate we're using is actually 90%. And if we were to do a 5-
11 year average using that FY07 64% implementation rate, we would get about 85% as the
12 percentage. And we thought that that was a bit too low a number to use for the whole 6-
13 year period, so we used 87.5 for the first two years and back to 90 for the remaining.

14
15 President Knapp,
16 And I guess the only other observation I would make is looking at the State School
17 Construction Aid, we increased the amount assumed of 50 million. All indications are
18 that we'll be doing very well if we close to that. So in all likelihood, we'll have to revise
19 that and that number will come in lower than the expected -- than the 50 million that we
20 have in there, unless something miraculous happens in Annapolis. Any other comments
21 on Spending Affordability Guidelines? Councilmember Floreen.

22
23 Councilmember Floreen,
24 I just wanted to clarify what you said -- well just reaffirm what you say in the first
25 paragraph. Now, we can always change this if 7 of us agree.

26
27 Glenn Orlin,
28 Yes. You wouldn't actually change the guidelines, you would be voting to exceed the
29 guidelines.

30
31 Councilmember Floreen,
32 Vote to exceed them; that's correct. Thank you.

33
34 President Knapp,
35 Any other comments on Spending Affordability? Councilmember Elrich.

36
37 Councilmember Elrich,
38 It has to do with state money for education. You said we'd be lucky if we got close to 50.
39 I thought I read something where his number was much less than 50.

40
41 President Knapp,
42 Right now we're at \$20 million. There's about \$130 million left to be allocated, so for us
43 to get to the 50 to 55 the plan anticipated, Montgomery County is going to have to take
44 nearly a third of what's remaining. The math doesn't lend itself particularly well to us



February 5, 2008

1 getting to the \$50 million range. Although, there is a lot of things that could happen and
2 depending on where things go, but I just want people to recognize that it's a stretch.

3
4 Councilmember Elrich,
5 I want to be clear of the magnitude of the stretch.

6
7 President Knapp,
8 Yep. Any other questions or comments? All in favor of the Spending Affordability
9 Guidelines for the Capital Budget as recommended by the MFP Committee, please
10 raise your hand? Councilmember Leventhal, Councilmember Berliner, Councilmember
11 Andrews -- it is unanimous. Thank you very much. That concludes action. We have a
12 few public hearings, so let's move through quickly. Good afternoon, ladies and
13 gentlemen. Let's see what our speaker list looks like. We may actually have to -- we're
14 going to have to adjourn until 3:45, and then the Council will come back for the public
15 hearing process. So we stand in recess for 25 minutes. Thank you. .

16
17 [RECESS]

18
19 President Knapp,
20 Good afternoon, ladies and gentlemen. This is a public hearing on a resolution to
21 approve a franchise agreement for cable television service with Cavalier IPTV, LLC. A
22 Management and Fiscal Policy Committee Work Session is tentatively scheduled for
23 March 6, 2008, at 2:00 p.m. Persons wishing to submit additional comments should do
24 so by the close of business on Friday, February 15, 2008, so the individual views can be
25 included in the material which staff will prepare for Council consideration. Before
26 beginning your presentation, please state your name clearly for the record and spell any
27 unusual names. For our first panel, we have Amy Wilson representing the County
28 Executive; Doug Breisch representing the City of Rockville; Kelly Cameron, Cable
29 Communication Advisory Committee; and Noah Bason, Cavalier IPTV, LLC. Ms.
30 Wilson, you are our first speaker.

31
32 Amy Wilson,
33 Good afternoon and thank you for the opportunity to testify at today's hearing
34 concerning the proposed Cable Franchise Agreement with Cavalier. I am Amy Wilson,
35 Program Manager in the County's Office of Cable and Communication Services. I'm
36 speaking on behalf of Steve Emmanuel, the Chief Information Officer, the County
37 Executive, and the Municipal Co-Franchisers. The Cable Office negotiates and
38 administers cable franchises on behalf of the County in 18 Municipal Code franchisers.
39 Our office, employing the intensive yet fair process it has developed over the years to
40 evaluate applications for and negotiate the terms of such franchise agreements,
41 evaluated Cavalier's application for franchise and negotiated the terms of the proposed
42 franchise agreement that you have in front of you today. The County Executive's
43 commitment has been to negotiate a timely cable franchise with Cavalier provided that
44 the franchise adequately protected County consumers. The County's negotiating team



February 5, 2008

1 considered the interests of all the affected parties, including the county residents, cable
2 subscribers, the municipalities within the county, the Montgomery County public
3 schools, Montgomery College, county government and outside agencies, as well as our
4 incumbent providers in an effort to achieve an equitable balance among all those
5 interests. We also considered the affects of the proposed franchise agreement on the
6 cable competition in the County. We believe that this agreement, which is the third
7 competitive cable television franchise agreement our office has negotiated since the
8 grant of the original franchise, meets the needs and interests of the community and
9 achieves all of the goals set by the County Executive. Under the terms of the 15-year
10 agreement, Cavalier will make services available to a large area of the County within six
11 months and ultimately at every wire center where it has facilities. However, the reach of
12 Cavalier's service from a given wire center will depend on the distance and the condition
13 of Verizon's copper lines, an inescapable limitation of Cavalier's technology. The County
14 and the municipalities will also receive additional capital funding for institutional
15 networks and facilities and equipment for public, educational and governmental use.
16 The agreement also contains customer service standards which are enforceable by
17 means of a security fund; requires Cavalier to carry the same public education and
18 government programming as the other operators in the County, and provide up to 13
19 PEG channels; and requires Cavalier to comply with all applicable federal, state and
20 local laws and regulations that may apply to the operation, construction and repair of the
21 cable system. We believe that the grant of the franchise to Cavalier on the terms and
22 conditions set out in the proposed franchise agreement offers substantial benefits to the
23 County and the participating municipalities and their residents. Thank you.

24
25 President Knapp,
26 Thank you very much. Mr. Breisch.

27
28 Doug Breisch,
29 Good afternoon, I'm Doug Breisch, Television and Telecommunications Manager for the
30 city of Rockville, and I'm appearing here on behalf of the city. Thank you for the
31 opportunity to testify. I don't think I've ever testified on a cable matter before this body
32 without Councilmember Praisner being present. My condolences and those of the city to
33 each of you, for the staff, and to Mrs. Praisner's family and friends. We deeply
34 appreciated her strong advocacy of the interest of consumers and local governments on
35 cable and telecommunications matters. Regarding the proposed Cavalier franchise, the
36 city of Rockville thanks County Executive staff and consultants for their work in diligence
37 to protecting the public's interests and those of local governments throughout the
38 negotiations on this proposed franchise agreement. The Mayor and Council of Rockville
39 welcome the prospect of competition in cable television services offered to our
40 community and its residents. We look forward to the benefits such competition promises
41 in pricing, services offered and in customer service. Overall, we believe the proposed
42 franchise agreement is a good one, especially when considered under the current legal,
43 legislative, regulatory, and industry climates. In general, we believe it is good for
44 residents, potential customers, local government and for Cavalier. However, we do have



February 5, 2008

1 some concerns with the proposed agreement. Our primary concerns relate to the
2 proposed coverage and timetable for services to be offered in all of Rockville. Cavalier
3 has explained to us that because of the current limits of technology, it cannot offer
4 service to King Farm, Falls Grove, Griffith Oaks and part of Glenora Hills areas of the
5 city. It is our understanding that this technology is developing and the city urges
6 Cavalier to obtain and deploy it as soon as possible. Optimally we would like Cavalier to
7 provide a timetable for offering the service to all parts of Rockville. We suggest that
8 Cavalier and the County's technical consultant regularly update the County and
9 municipalities on technology developments and deployment. Additionally, any approval
10 by the city of the proposed franchise agreement is contingent on County approval of a
11 county municipal agreement on essentially the same terms and conditions as previous
12 county municipal agreements. We believe we are at or very near agreement at the staff
13 level. It is our understanding that Cavalier will not be installing any cable, wiring or
14 equipment in the public rights-of-way, and further, that if it does, the franchise requires
15 Cavalier to abide by all local right-of-way ordinances, regulations and permitting
16 requirements. The city's approval will be contingent on this requirement. We are
17 disappointed the franchise does not require Cavalier to assign the Rockville channel
18 and other PEG channels to the same channels they are on the other cable systems. We
19 request that the city be given the opportunity for input before final PEG channel
20 assignments are made. Likewise, we're disappointed that the franchise allows Cavalier
21 to change the channel assignments for the PEG channels at will. We would prefer to
22 have an opportunity for input before channel assignments are changed. Thank you very
23 much.

24
25 President Knapp,

26 Thank you very much. Thank you for your comments. Mr. Cameron?

27
28 Kelly Cameron,

29 Good afternoon. My name is Kelly Cameron, and I'm speaking on behalf of the County's
30 Cable and Communications Advisory Committee, of which I'm a member. Before I
31 begin, I would also like to extend my condolences to members of the Council, both on
32 behalf of the committee and personally at the passing of Marilyn Praisner, who I'm sure
33 you know was very interested in the work of the committee as well cable and
34 communication issues generally. And she will be greatly missed. The committee
35 believes that competition is good for consumers, at least in principal. Competition is
36 expected to produce lower prices, more choices and better service. In the cable
37 industry, unfortunately, we have not seen the benefits that competition is expected to
38 bring. This is not the fault of the County but largely the result of federal policies. The
39 County's franchise service providers continue to raise their prices, not lower them,
40 despite the presence of competition. Some residents have more choices because of
41 competition, but not all areas of the county have even a second cable provider. Service
42 quality, especially in the area of customer service, is very disappointing as reflected by
43 the consistent failure of the franchisees, most notably Comcast, to comply with
44 customer service requirements. Cavalier now is seeking a franchise. The committee



February 5, 2008

believes that more competition in principal is better for consumers than less competition, but we're not convinced that Cavalier's entry in the market will do much to produce more choice, lower prices and better service. Indeed, Cavalier is not even proposing to serve all areas of the county and will rely exclusively on Verizon's copper phone lines to deliver service. Further, Cavalier is offering rates that overall are not very different from those offered by Comcast and Verizon, for they are triple play bundles. Although the committee is not opposed to Cavalier's application, the Council should very carefully review Cavalier's request. And the committee has the following concerns: On December 19, members of the committee met with Noah Bason of Cavalier in order to review Cavalier's application. Mr. Bason made a presentation that admittedly contained some outdated information. Cavalier subsequently provided some additional information, but the committee is still awaiting more complete disclosure. In addition, the committee asked a number of questions, including detailed written requests for information concerning Cavalier's financial data that accompanies its application. Members of the committee raised questions about Cavalier's financial data, in particular because we would not want to see a new entrant fail and leave its subscribers stranded. Unfortunately, despite repeated reminders from the Cable Office, Cavalier did not respond to the committee's questions for more than six weeks. This delay has hindered the ability to complete its review of Cavalier's application, and consequently, we are not in a position to advocate for its approval. We hope the Council will carefully scrutinize Cavalier's application in order to ensure that Cavalier will improve service to consumers in the County.

President Knapp,
Thank you very much.

Kelly Cameron,
And I have documents supporting my statement as well.

President Knapp,
Thank you. Mr. Bason?

Noah Bason,
Good afternoon. I appreciate the opportunity to speak this afternoon -- I'm sorry. My name is Noah Bason. I'm here with Cavalier Telephone and IPTV. I appreciate the opportunity to speak this afternoon and would like to use my time to give a brief overview of Cavalier's cable television product and how I believe it can benefit the Montgomery County citizens, and then answer some frequently asked questions. I will try to keep my comments as short as possible, and would be more than happy to try and answer any questions that people may have after that. First I want to reiterate an important point. While you may or may not have heard of Cavalier, we are currently offering phone and internet services in the county and have been for several years. As of last month, Cavalier had approximately 12,500 lines and almost 7,500 individual voice and data customers in Montgomery County. I note this because I believe it gives



February 5, 2008

1 context to what we are asking and helps explain several important characteristics of the
2 cable service we want to offer. Overall, having Cavalier's service within Montgomery
3 County will increase your constituents a choice of a provider where is currently limited.
4 In addition, the fact that Cavalier is already operating in the county, combined with the
5 fact that Cavalier's cable service will be offered over existing copper loops means that
6 there will be very little to no construction required by Cavalier to launch IPTV. Cavalier
7 will not be digging up right-of-ways and yards to install IPTV service. In fact, the only
8 real anticipated construction is the potential build-out involved in securing connections
9 to the Montgomery County's PEG channels, which our engineers and technical people
10 have already been working towards. The fact that Cavalier is already in Montgomery
11 County is also important because the IPT service will be able to make use of the
12 technical and customer support infrastructure, which is largely already in place. Another
13 issue that I believe bears mentioning is the fact that Cavalier's IPT service is 100%
14 digital. This is especially important given the FCC's 2009 all-digital mandate. While
15 other cable companies are still signing customers up on basic packages, though they
16 seem to be tempering the demand by increasing the non-digital tier service rates and
17 removing programs, Cavalier service is already compliant with the digital conversion,
18 thereby reducing the impending impact on customers to secure digital converter boxes
19 or upgrade their TV's. Inside every Cavalier set-top box is a digital converter which
20 allows customers to watch the digitally-received signal on analog or digital TV's. Finally,
21 I want to address some concerns that I have heard regarding Cavalier's proposed
22 franchise. The major issue I've heard, and for good reason I believe, is that of service
23 area. As I already mentioned, Cavalier's service will take advantage of existing copper
24 loops. The good news is no build-out is required; there is no need to tear up roads and
25 yards and lay fiber; IPTV service will be offered to all eligible residents at the same time.
26 The bad news is that universal service is not technologically possible at this time. The
27 downside to this is that some residents will not be able to get IPTV just like some cannot
28 get DSL because they are too far from a wire center. The current distance limitation is
29 between 10,000 and 13,000 feet depending on the specific loop. Another question that I
30 have heard about Cavalier's proposed franchise is that of PEG channel placement.
31 Unfortunately, Cavalier cannot guarantee the PEG channels Cavalier IPTV system will
32 correspond directly to PEG channels as they are currently offered. Cavalier will work
33 with the County to try and get PEG channels as close to the current position as
34 possible.

35
36 President Knapp,

37 Thank you very much. And again, the work session will be March 6, so I'm assuming
38 there will be a number of questions that Councilmembers will have at that point. Richard
39 Turner, Montgomery Community Television.

40
41 Richard Turner,

42 I'm Richard Turner, Executive Director representing Montgomery Community Television,
43 and thank you for this opportunity. I also share in the condolences regarding the loss of
44 your Councilmember and our Councilmember, Marilyn Praisner. MCT and Access

February 5, 2008



1 Montgomery certainly has a vested interest in the cable franchising process. As you
2 know, our direct involvement is being one of the PEG network providers, and to that
3 end, we have provided written testimony in which I'll summarize in that job is to be one
4 of the network providers. To that end, we have provided written testimony, which I'll
5 summarize that there are a number of things we urge, as we have in the past, the
6 Council to consider the public interest provisions of the franchising process. From the
7 bulleted points in that I would read that the County should seek methods to increase
8 competition and choice by consumers for cable services that include PEG access
9 channels; that the County should retain its authority over the public rights-of-way; that
10 the County should resist any effort to subvert the franchising process by not agreeing to
11 any provision that cable programming delivery is a subset of services via IPTV or FTTP
12 - fiber to the premises. The County should seek build-out provisions that protect the
13 public interest and extend the reach of this new competitive network. In particular, the
14 County should establish low- and moderate-income dwelling thresholds, such as 25%
15 passed within the first three years or increasing to 30% in subsequent years. Service to
16 public buildings should also include all PEG access programming origination sites in
17 offices once an area has been activated. The signal retransmission should include
18 closed caption content in all secondary audio services to ensure that multi-lingual and
19 captioned programming generated by PEG entities is carried as it originally intended;
20 that the proof of performance testing and routine maintenance for signal quality and
21 PEG signal transmission from the originating sites should be included and at the
22 expense of the franchisee. The County should ensure there is no additional cost for
23 PEG entities to interconnect and transmit programming from their origination sites. The
24 County should ensure that the number of PEG channels match the existing requirement
25 and expand as digital compression technologies are deployed within the same
26 timeframe established in existing franchises. There is a concern about the PEG channel
27 assignments, and of course, we would like to be able to be placed on the same
28 frequencies if at all possible. Timely and accurate program listings is also a major
29 concern that those listings and information be made accessible via on-screen guides
30 and published web and paper guides, and that any related expense for keeping the
31 guides accessible should be covered by the franchisee. And finally, that the County
32 must retain the right to audit franchise and PEG fees to ensure the collection of fees is
33 consistent with the County laws and regulations. I'll also add, that's not included in my
34 testimony, there was recent congressional testimony regarding ATT's implementation of
35 IPTV, which demonstrated substandard transmission of PEG network channels. I have
36 copies of some of the testimony that was given by Alliance for Community Media, which
37 shows a visual presentation that the actual delivery of those signals was significantly
38 substandard requiring almost up to a two-minute wait to actually receive the channel
39 upon pushing the channel. Now this is a different technology, as I understand it, from
40 what Cavalier has proposed. But certainly IPTV has proposed significant challenges for
41 PEG programmers and other channels including the non-delivery of second audio
42 programming as well as non-delivery of closed caption content. Thank you for this
43 opportunity to provide testimony.
44



February 5, 2008

1 President Knapp,
2 Thank you very much. We have a couple Councilmember questions. Councilmember
3 Berliner.

4
5 Councilmember Berliner,
6 Ms. Wilson, when I hear the testimony, first of all, like all of you, I find it very difficult to
7 have testimony on cable issues without our colleague here. I am reminded of the
8 eloquence of Councilmember Leventhal and his tribute to Marilyn in which he ended by
9 saying, what would Marilyn do? So I ask you, in light of the concerns that have been
10 raised with respect to this particular agreement, what would Marilyn do?

11
12 President Knapp,
13 That's a simple question. May take it to the work session with that one answer.

14
15 Amy Wilson,
16 I had my stock answer that I have to review my notes and we can discuss this at the
17 work session. That answer is not going work now. Marilyn -- oh, gosh -- competition was
18 a big part of everything that Mrs. Praisner pushed for. Customer service standards were
19 a high concern of hers also. So we want to make sure that we haven't negotiated a
20 franchise that addresses both of those issues, and I believe that the one the County
21 Executive has negotiated did address those.

22
23 Councilmember Berliner,
24 I note that -- let me turn to Cavalier -- one of the comments made was that you're really
25 not offering a lot of price competition, to the best of what I saw. So tell me, if you will,
26 the benefit of competition if it doesn't reflect itself in a price competition.

27
28 Noah Bason,
29 First I believe that we are offering price competition. Our triple play is priced at 79.99
30 where we're offering service currently, which is less than I pay for triple play in the
31 County. Additionally -- what I've seen is Verizon's is 99.99 for one-year entry, and then I
32 think the jury is still out what it's going to be after that. But we do plan to offer
33 competitive prices and even sub-competitive prices, I believe.

34
35 Councilmember Berliner,
36 I'll go for sub-competitive. There were some observations made with respect to getting
37 back to community representatives, the advisory commission. Do you feel like you've
38 gotten the responses that you need and that you'll be in a position to provide the
39 committee with your more detailed analysis of this when it goes to work session in
40 March?

41
42 Kelly Cameron,
43 Yes, I think we will. We received response last Friday. We have not had an opportunity
44 as a committee to meet in the meantime. If I may, I wanted to just say a word about

15

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 price competition, and I hope that my presentation wasn't unduly negative. The
2 problems in the cable industry are not the fault of Cavalier. They're their triple play
3 bundle is priced below Comcast and Verizon, but at the same time, as I understand it,
4 they're offering long distance at 5 cents a minute, where as Comcast and Verizon have
5 bundled unlimited long distance, so how that all works out for an individual consumer is
6 unclear.

7
8 Councilmember Berliner,
9 And with respect to the city of Rockville's concerns, in particular, are you going to be
10 able to address those as well?

11
12 Noah Bason,
13 I believe that we can. I mean, we will try to. Again, the technology, we can't promise a
14 date when the technology is going to expand.

15
16 Councilmember Berliner,
17 What I heard in their observation, is there a commitment in this agreement that when
18 that technology, in fact, exists, that you will, indeed, finish it? Is that assumed or
19 explicit?

20
21 Noah Bason,
22 I believe it's assumed, but the way our technology works is as the signal strength grows,
23 it would automatically expand at no cost to us, so we would absolutely push it as far as
24 we possibly can.

25
26 Councilmember Berliner,
27 Got it; thank you.

28
29 President Knapp,
30 Council Vice President Andrews.

31
32 Vice President Andrews,
33 Thank you, President Knapp. I want to thank Kelly Cameron for his service on the
34 Advisory Board. It's an important board, and it was one that has been very valued here
35 at the Council, and I appreciate your good work on it. I was disappointed that the
36 testimony indicated that it took over six weeks for the board to get the response from
37 Cavalier, and I hope that won't happen again; because in order to get an informed
38 recommendation, which is what we want, it's important that the board have the -- the
39 commission have the material in a timely way. So I hope that Cavalier will improve on
40 that. And I hope you'll address the issues that were raised about -- by the city of
41 Rockville about the PEG channels, because that would seem to be something that
42 could be addressed. It's not a technological issue. It's one that would greatly assist the
43 city, and I hope that you will review that.



February 5, 2008

1 Noah Bason,
2 I absolutely will. Thank you. And in my written comments, I get into some detail on that,
3 and I'll provide that to you.

4
5 President Knapp,
6 Thank you. Councilmember Elrich?

7
8 Councilmember Elrich,
9 I guess one thing I'd like in follow-up is responses to the questions raised by our cable
10 TV people about the signal and about any issues with delay, anything that would be
11 substandard in the signal. I think it would be helpful to -- .

12
13 Noah Bason,
14 Again, I don't mean to keep pointing back to my testimony which I didn't get all the way
15 through. Definitely one of the concerns is how quickly the response is when you change
16 channels, and that is what's limiting us to 10,000 feet currently. Where we're operating
17 currently, we don't notice any delay at 10,000 feet. I'm not familiar with the
18 congressional -- .

19
20 Councilmember Elrich,
21 Your operating PEG channels where you are currently operating?

22
23 Noah Bason,
24 We are.

25
26 Councilmember Elrich,
27 So there's no delay within 10,000 feet. How many households get left out at this break
28 point?

29
30 Noah Bason,
31 I couldn't tell you specifically for Montgomery County. It would -- .

32
33 Councilmember Elrich,
34 That would be interesting. Is there a way -- there must be a way of figuring that out, how
35 many households get left out.

36
37 Noah Bason,
38 If there is, it's not information that I have. I can try to look into that.

39
40 Councilmember Elrich,
41 My other question is -- is copper a dead end? I mean, if you bring customers into this on
42 copper, will they be forever sort of like a second tier or lower speed system? Does it
43 have the ability to bond with FIO [inaudible] and some other faster systems?



February 5, 2008

1 Noah Bason,
2 It does not have the band width capability of FIO's. The FCC is currently mandating that
3 it stay around. We can't expand the band width to copper, so what we're working on is
4 shrinking the size of the signal, and that's where the technology is going. It's not a dead
5 end, because that's what people rely on for their phones and DSL.

6
7 Councilmember Elrich,
8 A lot of copper out there. And as far as price competition, that's pretty much hopeless,
9 right? Is your 79.99, is that introductory rate or is that a permanent rate?

10
11 Noah Bason,
12 I think it's introductory. I think permanent is closer to 90.

13
14 Councilmember Elrich,
15 Closer to 90?

16
17 Noah Bason,
18 I'm you are sure.

19
20 Councilmember Elrich,
21 Closer to 99 or closer to the 90.

22
23 Noah Bason,
24 I think closer to 90.

25
26 Councilmember Elrich,
27 So it is less than the standard from competition, depending on how you look at long
28 distance and stuff?

29
30 Noah Bason,
31 Yes.

32
33 Councilmember Elrich,
34 Okay.

35
36 President Knapp,
37 That concludes questions and concludes this panel. Thank you very much for your
38 participation. Our next public hearing is a public hearing on Expedited Bill 1-08,
39 Personnel Disability Retirement, Group F and G, which would require the County to pay
40 a Group G member who retires on a service-connected disability retirement between
41 June 26, 2002 and June 30, 2007, a pension based on average final earnings if it
42 results in a greater benefit than final earnings in cases where the greater benefit under
43 33-43 result in the benefit calculated under 33-42. Require the County to pay a Group F
44 member who retires under service –connected disability pension on or after June 26,



February 5, 2008

2002, a pension based on average final earnings if the results end in a greater benefit than final earnings in cases where the greater benefit under 33-43 resulted in the benefit calculated under 33-42. And generally amend the law regarding disability retirement. A Management Fiscal Policy Committee work session, which I'm sure we'll all be in attendance for, is tentatively scheduled for February 19, 2008, at 9:30 a.m. Persons wishing to submit additional comments should do so by the close of business on Tuesday, February 12, 2008, so that individual views can be included in the material, which staff will prepare for Council consideration. Before beginning your presentation, please state your name clearly for the record and spell any unusual names. I see we have Mr. Adler representing the County Executive.

Joseph Adler,
Thank you, Mr. President. And I just, again, would also like to extend both my personal and Office of Human Resources condolences to you all for the very tragic death of Councilmember Praisner. Moving forward, members of the Council, I think the purpose of the bill was actually read by Council President Knapp. The only thing I would like to add is that this came to light as a result of a programming error, and that we discovered that were not paying the amount that both us and the FOP - the Fraternal Order of Police, thought should be paid, and this is why this bill is in front of us; it is more of a corrective bill. And going forward -- and we did over pay six retirees a total of \$12,570 by using the wrong calculation of the majority of the officers under this, and were brought up to the proper amount. And the two things going forward, we would like the -- purpose of the legislation is that these officers would not be required to pay this money back, and that it only applies to members of retirement Group F, which is police; and that certain of these police officers who are enrolled in a plan prior to July 1, 1978, and are eligible for roll call pay are the most likely impacted in terms of final versus average final earnings. There are currently 5 employees remaining in the retirement system, and this would impact them going forward.

President Knapp,
So this would basically correct an overpayment situation that's -- the way it's currently calculated?

Joseph Adler,
The currently is [inaudible] and was an underpayment.

Unidentified,
Over and under.

Joseph Adler,
But moving forward, it's an overpayment essentially.

President Knapp,
Okay. All right. Great. I see no questions.



February 5, 2008

Joseph Adler,
Thank you.

President Knapp,
Thank you very much.

Joseph Adler,
You did a great job explaining the Bill.

President Knapp,
We have good staff work. This concludes this public hearing. We now turn to Agenda Item number 10. This is a public hearing on Bill 38-07, Moderately Priced Housing Amendments, which would revise the standards for setting sale prices for moderately priced dwelling units -- MPDU's, repeal the authority of the Director of the Department of Housing and Community Affairs to allow an applicant to pay into the Housing Initiative Fund instead of building MPDU's in a proposed subdivision; revise the control periods for the sale or rent of MPDU's; revise the standards for building certain MPDU's in alternative locations; and revise other standards and procedures for and generally amend county law governing the Moderately Priced Dwelling Unit programs. A Planning Housing and Economic Development Committee work session is tentatively scheduled for March 13, 2008 at 2:30 p.m. Persons wishing to submit additional comments should do so by the close of business on Tuesday, February 19, 2008, so the individual views can be included in the material, which staff will prepare for Council consideration. Before beginning your presentation, please state your name clearly for the record, and spell any unusual names. We have six speakers; Rick Nelson representing the County Executive; Nanci Porten representing Maryland National Capital Building Industry Association; Bob Harris as an individual; Jim Humphrey representing Montgomery County Civic Federation; Robert Spalding representing Miller and Smith; and Robert Goldman representing Montgomery Housing Partnership. Mr. Nelson, you are the first speaker.

Rick Nelson,
I'm Rick Nelson, the Director of Montgomery County Department of Housing and Community Affairs, testifying today on behalf of County Executive Isiah Leggett. The Executive strongly supports adoption of Bill number 38-07, which makes changes to the moderately priced dwelling housing law in order to address issues that were raised in a recent report prepared by the Office of Legislative Oversight. One of the primary purposes of the bill is to revise the standards for setting sales prices for MPDU's. Since the program's inception, MPDU sale prices have been based on a developer's cost to construct the individual unit. However, as noted in the recent report of the OLO, this practice is producing an increasing number of sale MPDU's that are not affordable to income-eligible households served by the program. This problem is particularly acute in high-rise buildings. If the MPDU sales program is to continue to serve a target

20

This transcript has been prepared from television closed captioning and is not certified for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 population of households earning at or below 70% of median income, the method for
2 pricing of sales units must changed to reflect affordability in participating households.
3 The requirement to provide housing units that are affordable to households with modern
4 incomes has been a stated public policy in development requirement for over 30 years.
5 We believe this change will maintain, strengthen and further that public policy. The Bill
6 also eliminates a rent differential for MPDU's in high-rise buildings. The law permits the
7 Director of DHCA to approve higher rent in high-rises in order to compensate
8 developments of high-rise buildings for higher construction costs associated with high-
9 rise housing. Under the MPD regulations, these rents are set at affordable rates,
10 earning 70 -- .

11
12 President Knapp,
13 No, you can't. We're already done. But I appreciate it. It was a good try.

14
15 Rick Nelson,
16 Well, can you read faster?

17
18 President Knapp,
19 But that's okay. That's all right. We got your testimony, and I'm pretty sure you're not
20 you're going to participate in the work session. So thank you very much.

21
22 Rick Nelson,
23 I probably will, yeah.

24
25 President Knapp,
26 I know. Ms. Porten?

27
28 Nanci Porten,
29 Good afternoon, I'm Nanci Porten speaking on behalf of the Maryland National Capital
30 Building Industry Association. Since 1972, when the County Council approved MPDU
31 legislation for the first time, we, the building industry, saw the program as an obligation
32 to build homes for no profit for moderate-income citizens. Another term for making no
33 profit is revenue neutral -- no un-reimbursed costs, no profit. It's been defined as an
34 option, but, in fact, it has always been mandatory. Since 1972, we as an industry have
35 been supportive of the program, but our rights have consistently been eroded. The
36 intent of the law, past and current, is that the developer's contribution of the land was
37 compensated by bonus density and/or more flexible design guidelines. The law clearly
38 allowed the builder to recoup actual hard and soft costs to develop the lot and construct
39 the MPDU's. Over time with changes to the law and further regulation, we've lost the
40 opportunity in most cases to achieve any bonus density. Make no mistake about that,
41 most builders building MPDU's in this county are currently contributing the raw lots for
42 free. Many zones now require MPDU's can't even benefit from more flexible design
43 guidelines. Now this Bill seeks to eliminate the final economic protection -- the legal
44 right of the builder to recover his or her actual costs to construct the units. These costs

21

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 often exceed a value that is based on income affordability, especially in multi-family
2 construction. But to the extent the cost to build the unit exceeds the affordability
3 threshold, the County must figure out another way to fund that delta. The use of the
4 Housing Initiatives Fund or a credit on impact fees for the market units within the project
5 could be used for this purpose. In Montgomery County, grocers in business to sell food
6 to the public are not obligated to give 12-1/2% of their stock to feed the hungry. Book
7 sellers in business to sell books to the public are not obligated to give 12-1/2% of their
8 books to needy school children. But builders in order to develop property and sell
9 houses in this county are obligated to give 12-1/2% of their lots to those of moderate
10 income. The societal problem of the lack of affordable housing needs to be addressed
11 by the community in its entirety. When the MPDU law was approved, the essential
12 fairness was recognized and written into the law. That law contained a significant
13 protection of property rights, one of the provisions that this Bill seeks to eliminate. It
14 reads: the County Council hereby declares it to be public policy of the County to ensure
15 that private developers constructing moderately priced dwelling units under this chapter
16 incur no loss or penalty as a result thereof, and have reasonable prospects of realizing
17 a profit on such units by virtue of the MPDU density bonus provision of Chapter 59, and
18 in certain zones the optional development standards. This policy has been ignored for
19 many years. This Council should seek to remedy that failure to comply with the law, not
20 change the law to justify the failure. The building industry is in a position to be a part of
21 the solution, but it's not caused the problem. We support a program wherein the
22 provider of the unit is not obligated to incur a loss as a result of its cooperation and
23 involvement in solving this significant societal problem.

24
25 President Knapp,
26 You can obviously read faster than Mr. Nelson.

27
28 Rick Nelson,
29 Obviously.

30
31 President Knapp,
32 Mr. Harris.

33
34 Bob Harris,
35 Good afternoon. For the record, I'm Bob Harris of Holland and Knight speaking on
36 behalf of RMJ Development. RMJ is a Washington-area developer with experience in a
37 variety of land uses, including, for today's purposes, age-restricted housing. I want to
38 offer comments today with respect to MPDU legislation in the context of senior-housing
39 units that I believe will enable the program to better meet overall affordable housing
40 goals. First, although there is a huge unmet demand for MPDU's in general, there is no
41 particular demand for MPDU's that are age-restricted. To my knowledge, the County
42 does not even keep a list of individuals interested in age-restricted MPDU's. Second,
43 the restrictions imposed on MPDU's for [inaudible] income eligibility, the prohibition
44 against owning a home for five years prior to acquiring an MPDU, the requirement for

22

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 an MPDU to remain at such for 30 years, together with other such restrictions have it
2 particularly difficult to market age-restricted MPDU's from the builder's side. Do also are
3 potentially significant issues relating to the production cost of such units and related
4 fees when compared with the permitted rental or sales prices. These circumstances,
5 particularly to age-restricted units, call for more flexibility in the application of MPDU
6 requirements than for standard MPDU's. Unfortunately, the proposed legislation would
7 remove some existing flexibility at the same time that the standards should actually be
8 changed to better accommodate the production of MPDU's related to age-restricted
9 housing. We believe features should be included in either the legislation or the
10 executive regulations implementing it to help facilitate construction of MPDU's related to
11 senior housing projects. More specifically, we believe the hold period in the case of for-
12 sale MPDU's in a senior housing project should be modified from the standard 30-year
13 term perhaps to 10 years to better reflect the demographic profile of buyers in the
14 market where the minimum qualifying age is 55 and the average is closer to 65.
15 Second, where senior housing projects are part of a larger planned development, there
16 should be flexibility to allocate at least some portion of the MPDU's slated for such
17 senior units to the non-age-restricted units where a much higher demand exists. The
18 same flexibility should exist in delivery in age-restricted MPDU's as for rental units not
19 necessarily reflecting a strict proportionality to the number of rental versus condo units
20 at the market rate. This would enable a greater number of MPDU's to be delivered at a
21 more affordable rental price compared to the price required for an MPDU condo unit. It
22 also would enable the larger demand for rental MPDU's for seniors to be met better. In
23 terms of pricing any units offered for sale, the pricing should also reflect the construction
24 and amenity costs related to senior housing units and projects where amenities
25 designed to attract seniors are important. Finally, although the option of contributing to
26 the Housing Initiative Fund in lieu of producing MPDU's has become an unpopular topic
27 with respect to standard MPDU's, the same is not necessarily true for age-restricted
28 housing. Here the limited demand for age-restricted units compared to those without
29 age restriction, and the problems in finding purchasers for age-restricted MPDU condos
30 mean that more affordable housing units might be made available through some sort of
31 alternative payment program that would retarget the effort for non-age-restricted units.
32 We ask that you consider these as you proceed.

33
34 President Knapp,
35 Thank you very much. Mr. Humphrey?

36
37 Jim Humphrey,
38 Thank you. Good afternoon, I'm Jim Humphrey, Chair of the Montgomery County Civic
39 Federation Planning and Land Use Committee, testifying on behalf of the Federation in
40 favor of passage of Bill 38-07. MCCF favors the addition to the language of the
41 declaration of public policy section of chapter 25A clarifying that moderately-priced
42 housing should not only be just first within the County but within each individual
43 subdivision. And we endorse the provision in the bill which would require an applicant
44 wishing to provide MPDU's offsite rather than in a proposed high-rise building to provide



February 5, 2008

1 a number of MPDU's equal to 20% of the approved units in the high rise, while assuring
2 that no more than 30% of the units at the proposed alternative location would be
3 MPDU's. MCCF strong supports the provision in Bill 38-07 which would eliminate
4 buyouts as an MPDU alternative agreement, something the Federation has
5 recommended for the past five years or more. We thank Councilmember Andrews and
6 former Councilmember Perez for introducing legislation in 2003 to delete the buyout
7 provision; Councilmember Leventhal and his co-sponsors Mr. Andrews and Ms.
8 Trachtenberg for introducing the Bill last year to do so; as well as County Executive
9 Leggett for this current legislation to end MPDU buyouts. MCCF is particular pleased
10 with and supportive of the recommendation of DHCA Director Nelson to eliminate
11 altogether the Alternative Review Committee ARC, which was referred to in the County
12 Executive's transmittal letter accompanying this Bill. We point out, however, that
13 achieving that goal will require legislation to delete references to the ARC in section
14 59D 2.42B of the County Code, in addition to the two sections mentioned in the County
15 Executive's letter. MCCF believes the elimination of the ARC is a necessary step in
16 ensuring the MPDU program fosters creation of moderately-priced housing in a way that
17 does not allow for a violation of zoning standards or disregard for this county's master
18 plans. Finally, while not directly related to the Bill under consideration, we encourage
19 the Council to investigate how many replacement MPDU's the DHCA has secured for
20 the program by using past buyout monies. We've attached a chart on MPDU buyouts in
21 the Bethesda area for your consideration. And to determine whether DPS field
22 investigators are confirming adherence to MPDU staging agreements, a duty assigned
23 them as a result of revisions to the site plan enforcement process. Thank you.

24
25 President Knapp,
26 Thank you very much. Mr. Spalding?

27
28 Robert Spalding,
29 Good afternoon, I'm Bob Spalding of Miller and Smith. We've built many MPDU's in
30 Montgomery County and throughout the region. Our MPDU's are well designed,
31 integrated into our neighborhoods, and provide the opportunity for homeowners of
32 moderate means to live in an award-winning community in an award-winning county. In
33 looking back at the original intent of the MPDU program, it was in essence a partnership
34 where a private business provides a public good in exchange for bonus density and
35 without losing money on the MPDU. The original Bill recognized that the County was not
36 capable of meeting this public need of affordable housing, but the private home builder
37 should not be penalized. The Bill removes that protection and says it's okay for a private
38 home builder to lose money on an MPDU and penalized for providing a public need.
39 The proposed elimination of the no loss or penalty section exposes builders to laws
40 [inaudible] reviews. It also destroys the integrity of the program's fundamental basis.
41 The three public incentives to have private builders meet a public need were bonus
42 density, flexible regulations, and no negative financial impacts. The bonus density is
43 almost impossible to achieve on a non-high-rise application. Even though the master
44 plan encouraged maximizing the number of MPDU's, Miller and Smith lost 25 of 290

24

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 homes between the Council's approval of the zoning case and the Planning Board's
2 approval of the east side site plan. When we have proposed bonus MPDU units, we
3 have been told by the Planning Board that it looked like we were trying to jam in too
4 many units; and that we were told to go back and redesign the subdivision at a great
5 cost. The myriad of regulations and ordinances passed since 1972 have steadily eroded
6 the amount of developable area on a parcel making bonus density extremely difficult to
7 achieve. Since the bonus density is achieved by providing additional MPD units, the net
8 effect is fewer MPDU's in Montgomery County. The MPDU ordinance encourages
9 flexible regulations. There are some modified development standards where MPDU's
10 are used; however the net impact of other regulatory changes has been less flexibility.
11 This lack of flexibility has reduced the number of MPDU's and market-rate homes. Since
12 the price is a of function of supply and demand this has increased the price of housing
13 in the county and reduced the number of MPDU's. The final remaining incentive of the
14 MPDU ordinance is that private home builders should not lose money on the MPDU to
15 meet a public need of affordable housing. This provides removal of revenue neutral
16 provision what we are left with is a requirement that would strip out the underlying
17 fairness that made it a national model. Please retain the no new boss or penalty
18 provision. The Executive's proposed elimination of all substantive Council oversight and
19 legislative intent needed to guide regulations is a concern for us. These are essential
20 directives establishing what should be considered in establishing sales price and rents.
21 Unless someone can tell us what is inherently wrong with the individual provision, it
22 should be retained. The proposed removal of the provision to set the maximum sales
23 price based on the necessary and reasonable costs required to build and market
24 MPDU's leaves builders exposed to increasing costs that are not balanced by
25 increasing prices. The proposed changes take a program known for it fairness and
26 could turn it into an unfunded mandate for private business. If the County is serious
27 about providing affordable housing, this amendment is making a wrong turn. The
28 Council has the ability to make the right turn by retaining the no-net-loss provision, and
29 retaining the Council's guidance to the Executive on setting maximum sales prices.
30 Thank you.

31
32 President Knapp,
33 Thank you very much. Mr. Goldman.

34
35 Robert Goldman,
36 Hi. My name is Robert Goldman, President of Montgomery Housing Partnership. We
37 are a private, non-profit organization that develops affordable housing in Montgomery
38 County and have been doing that since 1989. First, let me say, like others, I am very
39 saddened by the passing of Marilyn Praisner. She was a strong supporter of affordable
40 housing, and especially a strong supporter of MHP, and our Great Hope Homes
41 development, which she was involved in, had a close connection with for the last 30
42 years when it was built. In terms of this legislation -- over the last few years -- I should
43 also is a that MHP is the largest non-profit purchasers of MPDU's. We own
44 approximately 100 MPDU's. And over the last few years the prices of MPDU's have

25

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 been increasing dramatically as construction costs have gone up and as there have
2 been more high-rise developments. The bottom line, I think, is that this is a model
3 program that's been talked about around the country. Constantly I get calls from people
4 all over the country asking me about the Montgomery County's model program. For this
5 program to be successful those who are purchasing need to be able to afford the units
6 they're buying. If they cannot afford it, they're either going to -- if it's not affordable,
7 they're either going to force themselves to try to make it work and put themselves in
8 situations that they really cannot truly afford, which we're seeing with many of these
9 foreclosures throughout the County; or it's just not going to be provided to a low- or
10 moderate-income person. And as a result, the program will not be effective. At the same
11 time, we recognize that with added costs developers, especially on CBD's, may go to a
12 commercial building instead of a residential and MPDU provisions or residential units
13 will not be provided. So we do think that it makes sense for the Council to think about
14 additional zoning benefits that might be provided to offset any additional costs. Lastly,
15 we would like to speak to a provision that relates to alternative location agreements. In
16 my opinion -- in our opinion, this is a provision that could really provide some creative
17 ways to do affordable housing. Under the new legislation, there is an added restriction
18 that would limit the alternative location to no more than 30% MPDU's. In most cases
19 that makes sense, but I think in some circumstances we're going to find that it doesn't
20 make sense. That either -- for example, on small build properties, it just doesn't seem to
21 make sense. You might think about an exemption for buildings, let's say, under 40 units.
22 Alternatively it seems like there should be built in some flexibility or exemption provision
23 that the Director of DHCA might have just in cases where it makes sense to allow more
24 than 30% affordable units. Thank you very much.

25
26 President Knapp,
27 Thank you very much. We have a number of questions beginning with Councilmember
28 Floreen.

29
30 Councilmember Floreen,
31 Thank you. First, Mr. Spalding, if the Council is approving X number of MPDU's and
32 they're not getting constructed, that's a big problem. So I think we need to figure out, Mr.
33 Faden and Mr. Nelson, how we resolve that. I would propose that you make that a
34 binding element and the numbers that you're showing should be binding elements, and
35 they're subject to Council approval. At least that's one thought. Maybe there's another
36 one, but I make that comment.

37
38 Mr. Spalding,
39 One of our concerns with that provision would be that if the total number of units it going
40 down, then the total number of MPDU's, the percentage would be going up.

41
42 Councilmember Floreen,
43 Yeah. The total numbers would have to be binding. Yeah, I agree, both.

26

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 Mr. Spalding,
2 Both ends?

3
4 Councilmember Floreen,
5 Yeah.

6
7 Mr. Spalding,
8 Okay.

9
10 Councilmember Floreen,
11 That's -- if we're approving it, that's the point of us approving it, I thought. Mr. Nelson, I
12 had the luxury of reading the rest of your testimony, being a speed reader as I am. Not
13 really. And I was very interested in page 2. And could you read the last paragraph so
14 everyone who hasn't had a chance to read this can tell us what you're saying.

15
16 Mr. Nelson,
17 In lieu of alternative payments, it Executive recommends the Planning Board and
18 District Council grant additional height and density when necessary within the limits of
19 the underlying zone to accommodate the inclusion of the entire MPDU requirement in a
20 high-rise building. This is consistent with the Executive's stated position that densities
21 and CBD's and around metro stops need to be increased if the County is to provide
22 additional affordable housing in Montgomery County. If this Bill is passed, the
23 elimination of the ARC would mean that the decision to grant additional height and/or
24 density to a project with MPDU's would rest with the Planning Board and the District
25 Council, without a finding from a third body, namely the ARC. Historically, this was the
26 case prior to the 2005 changes in the MPDU law. The Executive is of the opinion that
27 this is the best procedure for making land-use decisions, since both of these bodies
28 have formal procedures that include public information and participation. DHCA is
29 working with Council and Park and Planning staff to develop a Zoning Text Amendment
30 and Subdivision Regulation Amendment that would implement the change, if approved.

31
32 Councilmember Floreen,
33 Well, and so my question to you is -- and it's not unlike Mr. Humphrey's point, that there
34 are certain other things that need to be altered if this packages is to proceed. Where is
35 that other legislation that would go with this? I mean, where is it in terms of the process
36 of being drafted?

37
38 Mr. Nelson,
39 It hasn't gotten through the drafting stage. Primarily, we're waiting to see whether or not
40 this would in fact pass.

41
42 Councilmember Floreen,
43 Well, wouldn't that be a package proposal? If that's what you're suggesting? You're
44 saying in lieu of -- you're saying do away with alternative payments; right?

27

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1
2 Mr. Nelson,
3 Doing away with alternative payments and the ARC.

4
5 Councilmember Floreen,
6 And then you're saying instead of that, do this.

7
8 Mr. Nelson,
9 Right.

10
11 Councilmember Floreen,
12 Well, we've had that conversation before, and if we're going to have it again, okay. But it
13 is incumbent upon you and the County Executive to propose that solution and the terms
14 that you wish propose it, so we can consider it in its entirety. I'd have to say -- I mean
15 Mr. Humphrey also raises some good questions, I think, about where are the
16 expenditures. I think we were to have a committee meeting on this issue, and given our
17 very difficult circumstances, it will take a while to get to that. But I would like you to be
18 prepared to talk to Mr. Humphrey's points, because I think they're fair points. But this
19 other point is a very controversial issue. And the whole point of the alternative payments
20 is to allow the production of units, to get a -- I mean the main point of all of this, is it not,
21 is to get affordable housing units built -- created however, we can get that done. And
22 given the challenges of community concerns, master plans, and the like, it was one way
23 -- at least was employed to achieve that production of affordability. Now if that's what --
24 if you're saying that we should revisit the assumption -- this assumption with several
25 parts to it, both doing away with the alternative payments and providing a way for these
26 units to be generated on site, it seems to me we need you to tell us how you would do it.
27 We've tried that; it didn't pass several years ago. If we're going to do it again we need to
28 have that conversation out altogether at the same time. Because you can't consider one
29 point, it seems to me, without the other portion. Not unlike, as Mr. Humphrey says,
30 there's some -- he points out very rightly there's some other sections of the code that
31 would need to be altered to achieve what you're proposing.

32
33 Mr. Nelson,
34 We will have prepared by the time of the work session the answers to what other
35 sections of the code and what our proposals are. I think the -- .

36
37 Councilmember Floreen,
38 You're saying you'll have draft legislation on the other points introduced by then. I mean,
39 I'm hap -- we can see how, you know, there are many things up in the air at this
40 moment in time. But it seems to me we really need to have that from the County
41 Executive if we're to -- if you're proposing it -- at the same moment. So all these issues
42 can be vetted. I know that Mr. Humphrey would have many things to say about that, and
43 a lot of people will.



February 5, 2008

1 Mr. Nelson,
2 As usual.

3
4 Councilmember Floreen,
5 And I'm asking you -- yes. But having provided this proposal to us in writing as you have
6 in your testimony, we really need to see the structure of the County Executive's thinking
7 on this. So I would hope very much that we do nothing on this other part until we've
8 heard what you're thinking about in this regard. I would assume it's part of the
9 affordable housing task for group that Mr. Leggett has convened that would be part of
10 that conversation. I don't know, but if you're going to say this, which would, you know,
11 raise a lot of issues again, we need to see the language the [inaudible] -- .
12

13 Mr. Humphrey,
14 If I may, Councilmember?

15
16 Councilmember Floreen,
17 Mr. Humphrey.

18
19 Mr. Humphrey,
20 I think the reason that it is appropriate to look at these in different pieces of legislation is
21 that first, the County Executive has proposed doing away with alter -- with buyouts. That
22 only requires striking the section of Chapter 25A that relates to the buyout provisions. In
23 addition, DHCA Director Nelson is recommending total elimination of the ARC, but that
24 has to do with other sections of the code -- .
25

26 Councilmember Floreen,
27 Yeah. Yeah, you're right.

28
29 Mr. Humphrey,
30 And other authorities of the County Council or the Planning Board, and the two are not
31 necessarily connected.

32
33 Councilmember Floreen,
34 Well, they actually are.

35
36 Mr. Humphrey,
37 If you came at it from -- .
38

39 Councilmember Floreen,
40 Excuse me, but thank you. That's right that they're -- I'm not -- my concern is -- which is
41 these are hard issues. And you can't keep picking away at them without looking at the
42 full picture. You have to understand how one part affects another part. Absolutely
43 correct. And there are implications, love them or hate them, whatever they are.
44



February 5, 2008

1 Mr. Humphrey,
2 And if I may?

3
4 Councilmember Floreen,
5 They need to be vetted. And we'll have that conversation in committee. But I just have
6 to say if your testimony -- is that what -- if this is what you recommend, we need to see -
7 - it would really make a difference if we can see what you recommend.

8
9 Mr. Nelson,
10 Okay.

11
12 Councilmember Floreen,
13 Because that makes many of us more comfortable with solutions. If there is, you know,
14 the kind of buy-in that you'd hope existed. These are controversial, hard arguments. We
15 have been through them. And we need your thoughts on this and the words and the
16 legislation that would achieve that so we can have that full conversation. Thank you.

17
18 President Knapp,
19 Councilmember Berliner.

20
21 Councilmember Berliner,
22 Thank you, Council President. Mr. Nelson, I want to commend you for your
23 recommendation with respect to the alternative review committee. I confess in the year
24 and plus month that I've been here, every conversation I've had with respect to that
25 process I have found to be quite bizarre and troubling, and was contemplating
26 introducing legislation to eliminate it myself. So I appreciate your leadership with respect
27 to that issue. I would like to ask you one question, because I think Ms. Porten, among
28 others, has raised a very important issue that I think you need to respond to; which is
29 assume all of us want to make sure that people can, in fact, afford to buy moderately
30 priced units. And today that may or may not be possible. But it does raise the question
31 as to whether or not it's the builder's responsibility or the County's responsibility with
32 respect to that delta. So I would appreciate you addressing directly this large issue of
33 whose responsibility and why?

34
35 Mr. Nelson,
36 I think the County has, in fact, established the policy that they want to provide affordable
37 housing to those who can't afford it. They have, in fact, set up the process to try to
38 address the delta by increasing -- allowing for the increase in density, but we're finding
39 that that is not necessarily working. That's why we've got the recommendation in here
40 that, in fact, to accommodate that issue, then, in fact, the Planning Board should, in fact,
41 increase the density. I mean, this is part of the discussion that Councilmember Floreen
42 was talking about. It's something that the Affordable Housing Task Force has given
43 considerable thought to. I think the other piece of this is that it's our belief that with the
44 density that's allowed that it is possible for the builders to, in fact, be able to provide for

30

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 the MPDU's at the levels that we're talking about. If, in fact, proof is provided in terms of
2 the experience that this isn't possible, then I think we've got to work with the building
3 industry to come up with a proposal that will in fact cover it. Right now what we've got is
4 a situation where the prices are set at something that can't be afforded, or they're not
5 being built. And that is unacceptable in terms of the policy that I think we all support.
6 And I think that if this legislation is in fact passed, we will all be working strenuously to
7 try and make sure that it is achievable and without undue pain on the part of either the
8 builders or for that matter, the residents.

9
10 Councilmember Berliner,
11 Thank you, Mr. Nelson.

12
13 President Knapp,
14 Councilmember Elrich.

15
16 Councilmember Elrich,
17 I don't know any way to do this kind of social policy without there being pain for
18 somebody. I mean, ultimately, somebody has to pay for this and that would include
19 Montgomery County taxpayers, which fund a large part of what we've put into affordable
20 housing. So there are multiple parties at play here. And I would add also that I think the
21 Council needs to consider, and I know this is one of the things on the list of things to
22 consider, are payments that are being done in Virginia and a bunch of other counties
23 where they actually have the commercial sector in general contributing toward
24 affordable housing. Because frankly the builders are right; they're not alone in creating
25 this problem. I think they're not exactly totally blameless, but they're also not totally
26 responsible. It's real hard to provide affordable housing when you let people get paid
27 \$6.50 an hour, \$7.50 an hour, \$8.50 an hour. The builders have nothing to do with the
28 underlying economics and the fact that we tolerate people getting paid totally
29 substandard wages and then wonder why we can't house them. So I think that, you
30 know, we need to look at a number of different things. And I think to the extent that the
31 commercial sector contributes to our ability to house people rather than passing the
32 burden onto the taxpayers of the County, I think we need to look at another way to get
33 the commercial sector to contribute to solving the problem, which I think they're
34 creating. I you raise another issue, which is the thorny issue of density and master
35 plans. We have really got to look at the master plans so that what gets built with
36 whatever density bonus is what the master plans envision. We need -- these processes
37 have to be linked. It can't be that you have a master plan and you spend all of these
38 years -- 2 years, 18 months whatever it winds up being -- trying to get the community to
39 buy into a plan and then say, well we're doing affordable housing and the plan doesn't
40 count anymore. If that's our intention, then there ought to be assumptions into the
41 master plans that this is what buildings will look like if the MPDU's are required. I also
42 share the concern about trying to force MPDU's into high-rise buildings. The more I hear
43 about the construction costs of high-rise buildings, the more silly it seems to be to try to
44 force that issue there. And I'm particularly concerned if the money to pay the delta, as

31

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 you guys call it, is going to wind up coming out of the HIF fund or any other housing
2 fund, because that just makes it, A, extraordinarily expensive housing, and then we
3 strap ourselves or deprive ourselves of a way of addressing that issue, you know,
4 through the HIF fund. We just leave the HIF fund to make up the delta, and that doesn't
5 do us any good. That's not going to get us anymore units. I would be interested in -- not
6 a discussion, but like some concrete examples of how we could get equivalent units or
7 greater numbers of units outside the high rises in exchange for not having -- not
8 requiring everything onsite. I'm not fixated on the onsite part; I do think the units are
9 critical, and the buyouts are a joke. I mean, you cannot -- I look at the number that was
10 raised -- what was it 65 buyouts about \$1.5 million. And how many units could you buy
11 for \$1.5 million; not many. Maybe eight, maybe seven; it depends. Certainly not very
12 many. So if you're actually talking about providing the units rather than providing a
13 minimal amount of cash, I'm interested in that, but I'd like to see how you think it's going
14 to be done. But I also think it's critical to at least embody some of the intention of
15 requiring the units in the building, which is, I think the affordable units need to be
16 provided in the same area, the same school cluster. Because that's sort of the critical
17 element of economic and social integration is people, you know, living together. And it's
18 one thing to say, you know, I don't actually believe that whether or not you live in the
19 same building accomplishes anything; but I think living in the same community and
20 shopping in the same stores and going to the same schools is what this is about. And if
21 there are ways to do that such as we don't create, you know, pockets of MPDU's, but if
22 there are more productive ways to produce them in a more scattered situation, I'm
23 interested in seeing that too. I agree with Nancy about the need for a package. It's hard
24 to look at this and then wonder what the next piece is going to be. And some of these
25 things I agree could be separated out and done rather easily, such as killing the ARC,
26 which I would gladly do. But I think the broader questions about, you know, how do you
27 come up with a policy that actually produces the units you want needs to be wedded
28 into the piece of legislation that's in front of us. So I'd like to see more, not less. And I'd
29 certainly like to see data on the economics of how this -- things work and how you could
30 get us what we really want, which is some units.

31
32 President Knapp,
33 Councilmember Ervin?

34
35 Councilmember Ervin,
36 Thank you. I think that the hypocrisy of this conversation is too much. Because I've sat
37 here for a year and two months, just like Councilmember Berliner was saying, and I've
38 seen this Council make regulatory decisions which really impact the builders, and then
39 we want to pile on top of that more and then say, why aren't we producing these
40 MPDU's? It makes me very angry. What is our public policy goal in the first place? I
41 think it's a fairy tale that we keep coming back to the table, keep adding on more things
42 and expect that we're going to keep squeezing blood out of a turnip. I don't see how
43 we're going to do that. And so I did have a comment about Ms. Porten's testimony
44 which has to do with, I think, what Mr. Elrich just brought up, and that is this -- I'm going

32

This transcript has been prepared from television closed captioning and is not certified
for its form or content. Please note that errors and/or omissions may have occurred.



February 5, 2008

1 to read the paragraph. This Bill seeks to eliminate the final economic protection, the
2 legal right of the builder to recover his or her out-of-pocket costs to construct the units.
3 These costs often exceed a value that is based on income affordability, especially in
4 multi-family construction. And I'd like to say, I believe that we need density near metro. I
5 firmly believe that that's where we need to be building the multi-family units. And we've
6 seen here over the past twelve months how many of those ideas have been shot down.
7 At the same time we come back to have another discussion about how we're not doing
8 enough. I'm confused about where this Council is going. But to the extent the cost to
9 build the unit exceeds the affordability threshold, the County must figure out another
10 way to fund that delta. So my question is, to Mr. Nelson, the use of the Housing Initiative
11 Fund or credit on impact fees for the market units within the project to be used for this
12 purpose sounds like a good idea. I'm just wondering where the County Executive might
13 be on that issue.

14
15 Mr. Nelson,

16 At this point, it is not our intention or hope to use the Housing Initiative Fund for that
17 purpose because we view the Housing Initiative Fund as helping us to provide
18 additional affordable units in other areas. If, on the other hand, and again, I think this is -
19 - it's a legitimate issue that's being raised. If we find that that is the only way, then I think
20 we've got to look at that, see whether or not possibly we can increase the Housing
21 Initiative Fund to accommodate it. But at the same time, one of the concerns that I have
22 is that if we start off by just assuming that we're going to use the HIF for it, then, one, it's
23 going to use up the HIF. Second, I think it is going to reduce the creative effort to figure
24 out how to get affordable housing in some of the high rises in the metro area.

25
26 Councilmember Ervin,

27 That's great to hear. So, you know, that's a good starting point for the discussion, then;
28 if not this, then what? That's where I'm going.

29
30 Mr. Nelson,

31 And I do, I think I understand that, and, unfortunately, I'm in a [inaudible] position, and I
32 understand Ms. Porten's point of view. There are some builders who have said that they
33 can do it. There are some who have said that they can't. We're all in the position,
34 whether it's in the Executive Branch or on your side of the table, of trying to figure out
35 where do we end up, and do we lose by whatever legislation we have? I think the ability
36 to have a payment in lieu of providing the MPDU's clearly did not work. That's why the
37 Executive Branch is saying that we should get rid of that option. Because it didn't work.
38 We didn't get the units produced that we could or should have gotten produced for a
39 whole variety of reasons. And this gets rid of that sort of out. I think that we will be able
40 to make this work, but obviously there are some who don't, and it's going to be a painful
41 process. Hopefully it won't be unduly painful, as I said.

42
43 Councilmember Ervin,



February 5, 2008

1 Well, I think it's unfortunate for those of us who sit on this dais, and I'm speak for myself
2 right now that we hear from the same people who represent parts of our community and
3 the people who need this housing are not here today, nor are they at most of the public
4 hearings that we have. And they have a point of view on this issue as well; they need
5 the housing. So I'm just going to say, you know, I get a little concerned that we get
6 squeezed and we begin to make decisions based on, you know, the political context
7 that we all operate in. But I was elected also to speak on behalf of those folks whose
8 voices are struggling to be heard, but no one's hearing them; no one's listening. So I'd
9 be happy to be further engaged in this conversation. I don't sit on a committee, but I
10 don't think that makes a difference because we need this housing all over the county.

11 President Knapp,

12 Thank you very much. That concludes this public hearing but certainly not the
13 discussion on this issue. There will be plenty of questions still needing to be answered
14 and we will spend a lot of time on it. Thank you all very much.
15
16



February 5, 2008

Our final public hearing for the afternoon, Agenda Item Number 11, is a public hearing on Zoning Text Amendment 07-17, which would amend the Zoning Ordinance to clarify and update the process for Special Exceptions to address certain adequate public facilities issues requiring application for local zoning map amendment to address certain adequate public facilities issues, and update and generally amend the process for review of special exceptions and local zoning map amendments. Persons wishing to submit additional comments should do so by the close of business on February 8, 2008, so that your views can be included in the material, which staff will prepare for Council consideration. The PHED Committee work session is tentatively scheduled for February 19, 2008, at 2:00 p.m. Please call 240-777-7900 to confirm. Before beginning your presentation, please state your name and address clearly for the record and spell any unusual names. We have two speakers, Greg Russ for Montgomery County Planning Board and Patrick O'Neil for Glenmont Layhill Associates. Mr. Russ?

Greg Russ,

Thank you, Council President Knapp. Before I start, I also would like to just personally express my condolences to the loss of Ms. Praisner, who is also a very good friend as well. She truly will be missed.

President Knapp,
Thank you.

Greg Russ,

In terms of this text amendment, the Planning Board did hear this text amendment at its regular meeting on January 24, 2008. The Planning Board unanimously recommends approval of the text amendment as modified by staff in the staff report, and as further modified by the Board. The proposed modifications include revisions to lines 16 through 20 to clarify that for special exceptions that require approval of a preliminary plan of subdivision, the Board of Appeals in its review must consider whether the public facilities and services will be adequate to serve the proposed development based on the Growth Policy standards; so, in effect, at the time of this special exception application was submitted. The Board also believes that for special exceptions that do not require approval of a preliminary plan of subdivision that the Planning Board, not the Board of Appeals, should determine the adequacy of public facilities since the Planning Board is the agency equipped with the expertise to make this determination. Also, there are revisions to lines 53 to 57 to clarify that each application for a local map amendment must provide sufficient information to show that there is a reasonable probability that public facilities and services will be found adequate to serve the proposed development under the Growth Policy; in effect, when the local map amendment application is submitted. As introduced, the language could be interpreted to require that the adequate public facilities test be applied at the zoning stage. The Planning Board takes the position that an adequate public facilities test is not necessary at the local map amendment stage since there are rigorous APF findings applied at subdivision review.



February 5, 2008

1 And APF requirements for any particular application can change considerably between
2 a local map amendment review and subdivision review. Thank you.

3
4 President Knapp,
5 Thank you, very much. Mr. O'Neil?

6
7 Patrick O'Neil,
8 Thank you, President Knapp. Good afternoon, and I guess into evening now. My name
9 is Patrick O'Neil. I'm with the law firm of Lerch, Early and Brewer, and I'm here to
10 present some brief comments on behalf of our client, Glenmont Layhill Associates,
11 regarding Zoning Text Amendment 07-17. As you are aware, Glenmont Layhill
12 Associates is the applicant in Rezoning Applications G862 and G863, also known as
13 Glenmont Metro Center, which are pending before this body. You recall a few weeks
14 ago we had a lively discussion on the merits of those applications, and one issue that
15 was assumed at the time was that the Old Growth Policy was going to provide to those
16 local map amendments. And the proposed ZTA makes it clear that our client's
17 applications, which were filed over 13 months ago, will continue to be reviewed under
18 the Growth Policy that was in effect at the time of filing. To require or even leave open
19 the possibility that the rezoning applications should be reviewed under the new Growth
20 Policy at this late date in the application process would be extremely prejudicial and
21 contrary to the Council's findings regarding the applicability of the new Growth Policy.
22 And we appreciate the efforts of the Planning Board and the County Council to eliminate
23 any questions about the applicable Growth Policy under our circumstances. We
24 understand certainly that the project will be subject to the new Growth Policy at the time
25 of preliminary plan and review. And on behalf of our client, thank you for the opportunity
26 to present these comments.

27
28 President Knapp,
29 Thank you very much. There are no questions. The Council is in recess until 7:00 this
30 evening for the FY09 Capital Budget and FY09-14 Capital Improvements Program
31 Hearing, which would be in the third floor Council hearing room. Thank you.

Deleted: ?